

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

DAVID BIRDWELL, )  
v. Plaintiff, )  
JO ANNE B. BARNHART, ) No. 06-5028-CV-SW-FJG-SSA  
Commissioner of Social Security, )  
Defendant. )

**ORDER**

Pending before the Court is Plaintiff's Application for Leave to File Civil Action In Forma Pauperis (Doc. No. 1). Together with said motion is Plaintiff's Affidavit of Financial Status.

Pursuant to 28 U.S.C. § 1915, this Court may authorize the commencement or prosecution of any suit without prepayment of fees when an applicant files an affidavit stating that he is unable to pay the costs of the lawsuit, and the Court determines that the lawsuit is not frivolous or malicious.

The Court must exercise its discretion in determining whether an applicant is sufficiently impoverished to qualify under § 1915. Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983). Such showing of poverty is sufficient if the applicant would become completely destitute or be forced to give up the basic necessities of life if required to pay the costs of the lawsuit. Adkins v. E.I. Du Pont De Nemours & Co., 335 U.S. 331, 339 (1948); Local Rule 83.7(a) (1999).

Plaintiff's Affidavit reveals that he is single and has no dependents living with him. Plaintiff states in his affidavit that he is currently unemployed, and lists no previous employment. Plaintiff states that he lives with his girlfriend, who receives SSI disability payments of \$603.00 per month.

Plaintiff does not own real property or an automobile. Plaintiff indicates that he has \$0.00 cash on hand, and does not indicate a bank at which he maintains any business. Plaintiff indicates that, over the past twelve months, he has only received money from his girlfriend, who pays for all his bills and for his medicines. Plaintiff reports that his girlfriend pays monthly rent of \$357.00, telephone bills of \$100.00, electricity bills of \$50.00, and medical co-pays of \$25.00. He also states that he draws food stamps on his girlfriend's case for \$249.00 per month.

Based upon the information provided in plaintiff's affidavit, the Court believes that plaintiff is sufficiently impoverished to be permitted to proceed in forma pauperis. Therefore, the Court will grant plaintiff's application for leave to file this civil action in forma pauperis. Additionally, the Court finds that Plaintiff's complaint is not barred by 28 U.S.C. § 1915(e)(2)(B). The complaint does not appear to be frivolous, nor does it appear to state a claim on which relief cannot be granted or seek monetary relief against a defendant who is immune from such relief.

Accordingly, it is hereby **ORDERED** that:

1. Plaintiff's Motion to Proceed In Forma Pauperis (Doc. No. 1) is GRANTED;
2. because this case is included in the Case Management/Electronic Case Filing system, plaintiff's counsel shall be responsible for electronically filing the Complaint on or before April 3, 2006; and

3. plaintiff shall be responsible for serving process in the manner described in Federal Rule of Civil Procedure 4(l).

Date: March 30, 2006  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
United States District Judge